

SERVICE DATE - LATE RELEASE FEBRUARY 16, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 766N)

CONRAIL ABANDONMENT OF THE WEEHAWKEN  
BRANCH—IN HUDSON COUNTY, NJ

STB Docket No. AB-167 (Sub-No. 1067N)

CONRAIL ABANDONMENT OF THE RIVER  
LINE—IN HUDSON COUNTY, NJ

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: February 16, 2001

On February 12, 2001, Cognis Corporation (Cognis) timely filed an offer of financial assistance (OFA) to subsidize operations over approximately 3.84-miles of the Weehawken Branch<sup>1</sup> and approximately 6.95-miles of the River Line<sup>2</sup> (collectively referred to as the River Line) that Consolidated Rail Corporation (Conrail) seeks to abandon in Hudson County, NJ.<sup>3</sup> Cognis offers \$7,960 to subsidize the continued operation of the River Line for one year and the

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<sup>1</sup> The 3.84-mile segment extends from the point of switch in Jersey City, NJ (approximately MP 0.00), to the southerly R.O.W. line of Baldwin Avenue, in Weehawken, NJ (approximately MP 2.84), and includes the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.

<sup>2</sup> The 6.95-mile segment is divided into two parts: (1) from the connection to the Passaic and Harismus Branch at CP "Waldo" in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard; and (2) from (a) the south side of Clifton Road in Weehawken (approximately MP 0.00) to the northwest side of Tonnelle Avenue (excluding the portion of line, associated track, and underlying right-of-way necessary to retain access and continue service to Durkee Foods) in North Bergen, NJ (approximately MP 1.53); (b) the National Docks Secondary in Jersey City from where it connects with the River Line at CP "Nave," to the east side of Newark Avenue (approximately 1,350 feet); and (c) the Weehawken Branch (Chicken Yard) in Weehawken, from where it connects with the River Line on the east side of Willow Avenue, to the end of the track (approximately 2,450 feet).

<sup>3</sup> These proceedings are not consolidated. They are being considered together because the Weehawken Branch and the River Line are operated as a single line.

nominal sum of \$1 to purchase Conrail's interest in the line<sup>4</sup> at any time prior to the expiration of the subsidy period, with the purchase decision left to Cognis' sole discretion.<sup>5</sup>

An OFA to subsidize or acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

Stating that it is a Delaware corporation with sales in excess of \$800 million and normal operating earnings in excess of \$30 million in 2000, Cognis claims that it is financially responsible as envisioned by 49 U.S.C. 10904(d). Additionally, Cognis states that Dykes Lumber Company, Inc., the only other shipper on the River Line, has agreed to share in the costs of preparing, negotiating, and executing the OFA.

Cognis' proposed subsidy adopts Conrail's forecast year avoidable cost figure but rejects Conrail's estimated subsidy figure of \$1,834,630. Cognis attributes the discrepancy between its proposed subsidy and Conrail's estimated subsidy figure to Conrail including as necessary rehabilitation the cost of constructing safety-related facilities for joint freight and passenger service. The shipper contends that this is not a valid rehabilitation cost under the OFA standards, and, in any event, that it is not, and cannot be, obligated to pay for the construction.<sup>6</sup> Cognis'

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<sup>4</sup> A large part of the real estate and track of the River Line was transferred to New Jersey Transit Corporation (NJT), an instrumentality of the State of New Jersey, on or about October 24, 1995, pursuant to a Freight Relocation and River Line Acquisition Agreement (Acquisition Agreement) that was entered into in 1985 and formalized in 1989. Under the agreement, NJT acquired the right to reconstruct and use the River Line for light rail commuter passenger service and Conrail agreed to seek authority to abandon freight service. If the abandonments are approved, the Acquisition Agreement provides that the River Line will be dedicated to passenger service and through freight services will be transferred to Conrail's Northern Branch, which NJT is to reconstruct and upgrade. If the abandonments are denied, operating restrictions will be necessary and Conrail will be obligated to construct safety-related facilities to permit both freight and passenger operations. Conrail estimates that the cost of the safety-related facilities could exceed \$1.8 million, and NJT estimates that their cost could exceed \$4 million.

<sup>5</sup> Cognis filed motions to dismiss the abandonment applications on January 12, 2001, and Conrail filed replies on January 24, 2001. The Board will issue a separate decision addressing the motions.

<sup>6</sup> Cognis states that the Acquisition Agreement specifies that the obligation to construct the safety-related facilities is not triggered until Conrail is denied abandonment authority. Additionally, the shipper contends that under the standards of Maine, DOT-Acq. Exemption,  
(continued...)

purchase offer is based on Conrail's financial data, which show that the sale and transfer of the River Line to NJT left Conrail with a \$0 net liquidation value, and on the absence of any evidence of a higher going concern value.

On February 15, 2001, Conrail filed a reply in opposition to the OFA. In the reply, Conrail argues that Cognis' assertion of financial responsibility is deficient in the absence of evidentiary support and that Cognis' proposed subsidy and purchase price are grossly inadequate.

The Board's regulations do not provide for replies to OFAs. Because reasonableness and financial responsibility determinations must be made within 5 days of the date an OFA is filed, they are usually based on the offer alone. Conrail's argument concerning Cognis' financial responsibility has nonetheless been considered and the information submitted by Cognis is found sufficient to demonstrate that the offeror is financially responsible. Conrail's arguments concerning the reasonableness of Cognis' subsidy and purchase offer have also been considered, along with Cognis' explanation for the discrepancies. Cognis' offer to subsidize and purchase the River Line is sufficiently reasonable to begin negotiations. Conrail's arguments concerning the value of the River Line for subsidy and purchase purposes can be considered if the Board is requested to set terms and conditions.

Because Cognis, a financially responsible entity, has offered financial assistance, decisions authorizing Conrail to abandon the lines will not be issued at this time.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$14,900. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of the proceeding, along with the words "Attention: Application Unit, Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

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<sup>6</sup>(...continued)

ME. Central R. Co., 8 I.C.C.2d 835 (1991), the construction condition is not enforceable and would either have to be eliminated because it unlawfully impaired Conrail's ability to provide freight service or have to be imposed on NJT because the transaction failed to leave Conrail with an "exclusive permanent easement."

1. The issuance of decisions authorizing abandonments is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If Cognis and Conrail cannot agree on a subsidy and/or purchase price, either party may request, on or before March 14, 2001, that the Board establish terms and conditions for the subsidy and/or purchase. If no agreement is reached and no request is submitted by that date, the Board will vacate this decision and immediately issue decisions authorizing the abandonments.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary